

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3       DELARIAN KAMERON WILSON,  
4                                   Appellant,  
5       vs.  
6       THE STATE OF NEVADA  
                                  Respondent.

**Supreme Court No.: 68576**

District Court Case No.: 07C232494-1

**Electronically Filed**  
**Aug 28 2015 09:14 a.m.**  
**Tracie K. Lindeman**  
**Clerk of Supreme Court**

7  
8                                   **DOCKETING STATEMENT**  
9                                   **CRIMINAL APPEALS**

10       1.       Eighth Judicial District Court, Clark County.  
                  Judge Jennifer Togliatti, District Court Case No. 07C232494-1

11       2.       If the Defendant was given a sentence,

12               (a) What is the sentence? On July 3, 2008, the Court sentenced the Appellant as  
13               follows:

14                       Count 1 – Robbery with Use of a Deadly Weapon – a maximum of 180  
15                       months with a minimum parole eligibility of 72 months, plus an equal  
16                       and consecutive term of 180 months maximum and 72 months minimum  
                      for the Use of a Deadly Weapon;

17                       Count 2 – Robbery with Use of a Deadly Weapon - a maximum of 180  
18                       months with a minimum parole eligibility of 72 months, plus an equal  
19                       and consecutive term of 180 months maximum and 72 months minimum  
                      for the Use of a Deadly Weapon, and;

20                       Count 3 – Sexual Assault – LIFE, with a minimum parole eligibility of  
                      10 years.

21                       The Counts were ordered to run consecutive to each other, with 500 days  
22                       credit for time served.

23               (b) Has the sentenced been stayed pending appeal? No.

24               (c) Was the defendant admitted to bail pending appeal? No.

25       3.       Was counsel in the district court appointed [X] or retained [ ]?

26       4.       Attorney filing this docketing statement:

27               MATTHEW D. CARLING, ESQ.  
28               51 East 400 North, Bldg. #1  
                  Cedar City, Utah 84720

(702) 419-7330 (Office)  
(702) 446-8065 (Fax)  
CedarLegal@gmail.com

Client: DELARIAN K. WILSON

5. Is appellate counsel appointed ☒ or retained ☐?

**If this is a joint statement by multiple appellants, add the names and addresses of other counsel on an additional sheet of accompanied by a certificate that they concur in the filing of this statement. N/A**

6. Attorney(s) representing respondents:

CLARK COUNTY DISTRICT ATTORNEY  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212

7. **Nature of disposition below:**

- |  |   |
|--|---|
| <input type="checkbox"/> Judgment after bench trial            | <input type="checkbox"/> Grant of pretrial habeas                         |
| <input type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Grant of motion to suppress evidence             |
| <input type="checkbox"/> Judgment upon guilty plea             | <input checked="" type="checkbox"/> Post-conviction habeas (NRS ch. 34)   |
| <input type="checkbox"/> Grant of pretrial motion to dismiss   | <input type="checkbox"/> grant <input checked="" type="checkbox"/> denial |
| <input type="checkbox"/> Parole/Probation revocation           | <input type="checkbox"/> Other disposition                                |
| <input type="checkbox"/> Motion for new trial                  |   |
| <input type="checkbox"/> grant <input type="checkbox"/> denial |   |
| <input type="checkbox"/> Motion to withdraw guilty plea        |   |
| <input type="checkbox"/> grant <input type="checkbox"/> denial |   |

8. **Does the appeal raise issues concerning any of the following:**

- |   |   |
|---|---|
| <input type="checkbox"/> death sentence           | <input type="checkbox"/> juvenile offender    |
| <input checked="" type="checkbox"/> life sentence | <input type="checkbox"/> pretrial proceedings |

9. **Expedited appeals.** The court may decided to expedite the appellate process in this matter. Are you in favor of proceeding in such manner?

☒ Yes ☐ No

10. **Pending and prior proceedings in this court.** List the case name, and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal (*e.g.*, separate appeals by co-defendants, appeal after post-conviction proceeding): Delarian Wilson v. State of Nevada, Supreme Court Nos. 52104, 52127, 57473, 60309, & 64617.

11. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts that are related to this appeal (e.g., habeas corpus proceedings in state or federal court, bifurcated proceedings against co-defendants):

None.

12. **Nature of action.** Briefly describe the nature of the action and result below: On July 3, 2008, the Appellant was sentenced as indicated above. On October 10, 2011, Wilson filed his *Petition for Writ of Habeas Corpus* (the “**First Petition**”). The State opposed the First Petition and moved to dismiss, arguing the First Petition was time barred as it was filed well past the year deadline from the disposition of the direct appeal. In reply, Wilson argued there was good cause for the late filing, which Wilson argued had already been determined by the trial court. A hearing on the First Petition was held on December 13, 2011, and the trial court denied the First Petition both procedurally and on its merits. The *Findings of Fact, Conclusions of Law, and Order* was filed on January 6, 2012 (the “**Findings and Conclusions**”), which Wilson requested to be clarified and/or reconsidered; however, the trial court determined to enter an order staying the findings and conclusions after briefing on Wilson’s request to clarify or stay the *Findings and Conclusions* on February 21, 2012. Wilson’s request to clarify or stay the *Findings and Conclusions* was based upon the argument that there was misapplication of the facts therein. Wilson argued he could not have been aware of the need to file a petition for a writ of habeas corpus when he discovered the appeal had been resolved due to the erroneous information from his appellate counsel. Wilson appealed the *Findings and Conclusions* on February 21, 2012. This appeal was withdrawn based on Wilson’s new counsel’s advice to pursue the withdrawal of Wilson’s guilty plea; however, based on *Harris v. State*, which was issued weeks after the withdrawal of the appeal, Wilson was unable to pursue the withdrawal of his guilty plea. Thus, Wilson’s remaining option was to pursue further proceedings in the trial court to determine the issue of the time bars governing habeas corpus petitions. On June 4, 2013, the matter was set for evidentiary hearing on the limited issue of good cause to excuse procedural bars. On November 12, 2013, the trial court entered its *Findings of Fact, Conclusions of Law and Order*, which dismissed the First Petition on the basis that Wilson had failed to plead sufficient facts to demonstrate good cause for delaying to file the First Petition within the one (1) year deadline. Further, this Court determined Mr. Brower was appointed subsequent to the time bar for the First Petition. Thus, the trial court dismissed the First Petition as untimely. On August 19, 2014, Mr. Brower moved to withdraw as counsel for Wilson, alleging a conflict of interest. Mr. Brower stated that he advised Wilson to withdraw his appeal in the Nevada Supreme Court regarding time-bar issues and instead pursue withdrawing his guilty plea. However, after withdrawing the appeal, *Harris v. State* was issued, which rendered Wilson’s claims unavailable based on the holdings therein. Thus, Mr. Brower stated Wilson’s available claim was his ineffectiveness and needed to be

1 handled by another attorney. He requested that a new attorney be appointed to  
2 assist Wilson in pursuing the claim. On September 4, 2014, Mr. Carling was  
3 appointed to assist the Defendant. Counsel filed a Supplemental Petition on  
4 February 9, 2015. The State filed a Response on March , 2015. The matter was  
5 argued on April 23, 2015. On May 6, 2015, the Court issued a decision. The  
6 Notice of Entry of Findings of Fact, Conclusions of Law and Order was filed on  
7 July 24, 2015.

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13. **Issues on appeal.** State concisely the principal issues(s) in this appeal:

**COUNSEL WAS INEFFECTIVE FOR ADVISING WILSON TO  
VOLUNTARILY DISMISS HIS APPEAL FROM THE FIRST  
PETITION DENIAL IN FAVOR OF FILING A MOTION TO  
WITHDRAW HIS GUILTY PLEA WITHOUT INFORMING  
WILSON OF THE PRECEDENT AND LAW THAT  
CONTRADICTED THIS STRATEGY.**

**THE INITIAL PETITION SHOULD NOT HAVE BEEN TIME  
BARRED.**

14. **Constitutional issues.** If the State is not a party and if this appeal challenges  
the constitutionality of a statute or municipal ordinance, have you notified the  
clerk of this court and the attorney general in accordance with NRAP 44 and  
NRS 30.130?

[X] N/A [ ] Yes [ ] No

15. **Issues of first-impression or of public interest.** Does this appeal present a  
substantial legal issue of first-impression in this jurisdiction or one affecting an  
important public interest?

First impression: [ ] Yes [X] No

Public Interest: [ ] Yes [X] No

16. **Length of trial.** If this action proceeded to trial or evidentiary hearing in the  
district court, how many days did the trial or evidentiary hearing last?

N/A.

17. **Oral Argument.** Would you object to submission of this appeal for disposition  
without oral argument?

[ ] Yes [X] No

**TIMELINESS OF NOTICE OF APPEAL**

- 1  
2 18. Date district court announced decision, sentence or order appealed from? May  
3 6, 2015  
4  
5 19. Date of entry of written judgment or order appealed from: July 24, 2015  
6  
7 (a) If no written judgment or order was filed in the district court, explain the  
8 basis for seeking appellate review. N/A  
9  
10 20. If this appeal is from an order granting or denying a petition for a writ of habeas  
11 corpus, indicate the date written notice of entry of judgment or order was served  
12 by the district court. July 24, 2015.  
13  
14 (a) Was service by delivery ☐ (fax) or by mail ☐. Neither as of February 8,  
15 2012. Counsel is still waiting for the State to provide the same.  
16  
17 21. If the time for filing the notice of appeal was tolled by a post judgment motion,  
18  
19 (a) Specify the type of motion, and the date of filing of the motion:  
20  
21 Arrest Judgment \_\_\_\_\_ Date filed \_\_\_\_\_  
22 New trial \_\_\_\_\_ Date filed \_\_\_\_\_  
23 (newly discovery evidence)  
24 New trial \_\_\_\_\_ Date filed \_\_\_\_\_  
25 (other grounds)  
26  
27 (b) Date of entry of written order resolving motion \_\_\_\_\_  
28  
29 22. Date notice of appeal filed: August 4, 2015  
30  
31 23. Specify statute or rule governing the time limit for filing the notice of appeal,  
32 e.g., NRAP 4(b), NRS 34.530, NRS 34.575, NRS 177.015(2), or other.

33 **NRS 34.575**

### 34 **SUBSTANTIVE APPEALABILITY**

- 35 24. Specify statute, rule or other authority that grants this court jurisdiction to  
36 review from:

37 ☐ NRS 177.015(1)(b) ☐ NRS 34.560  
38 ☐ NRS 177.015(1)(c) ☒ NRS 34.575(1)  
39 ☐ NRS 177.015(2) ☐ NRS 34.575(2)  
40 ☐ NRS 177.015(3) ☐ Other (specify) \_\_\_\_\_

### 41 **VERIFICATION**

1  
2 I certify that the information provided in this docketing statement is true and complete  
3 to the best of my knowledge, information and belief.

4 DELARIAN WILSON  
5 Applicant

MATTHEW D. CARLING, ESQ.  
Counsel of Record

6 August 27, 2015

7 /s/ Matthew D. Carling  
8 MATTHEW D. CARLING, ESQ.

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**CERTIFICATE OF SERVICE**

I certify that on the 27<sup>th</sup> day of August, 2015, I served a copy of this completed docketing statement upon all counsel of records:

[ ] by personally serving it upon him/her; or

[X] by mailing it by first class mail with sufficient postage prepaid to the following address(es):

CLARK COUNTY DISTRICT ATTORNEY  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212

DATED this 27<sup>th</sup> day of August, 2015.

/s/ Matthew D. Carling  
MATTHEW D. CARLING, ESQ.  
Nevada Bar No. 7302  
Attorney for Appellant,  
DELARIAN K. WILSON